

Manual of Policies and Procedures

CONFIDENTIALITY, FRAUD, CIVIL RIGHTS, AND STATE HEARINGS



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**CONFIDENTIALITY OF INFORMATION
CONFIDENTIALITY OF RECORDS**

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**CONFIDENTIALITY OF INFORMATION
CONFIDENTIALITY OF RECORDS**

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DIVISION 19 CONFIDENTIALITY OF INFORMATION**CHAPTER 19-000 CONFIDENTIALITY OF RECORDS****19-001 CONFIDENTIALITY OF RECORDS - OBJECTIVE AND SCOPE****19-001**

In accordance with Welfare and Institutions Code Section 10850 and 45 CFR Section 205.50(a), these regulations were created to protect the applicants and recipients against identification, exploitation or embarrassment that could result from the release of information identifying them as having applied for or having received public assistance. They also outline under what circumstances and to whom such information may be released. These regulations pertain to all records, papers, files and communications pertaining to the following public social service programs, both aid and services, administered or supervised by the California Department of Social Services (CDSS), CalWORKs (including WIN, and Child Welfare Services), APSB, SSP (all segments), and Title XX, unless otherwise indicated. These regulations bind public and private agencies with whom the county contracts to perform any part of the covered public social service programs. The CDSS programs not covered by these regulations have their own rules regarding records and confidentiality which are to be referred to when dealing with such records, e.g., food stamps in Section 63-201.3 and Adoptions in Title 22 of the California Administrative Code. The term public social services programs is defined as both assistance and social service programs administered or supervised by CDSS or the California Department of Health Services.

NOTE: Authority cited: Sections 10063(b), 10553, and 10554, Welfare and Institutions Code. Reference: Section 10063(a), Welfare and Institutions Code.

19-002 INFORMATION THAT IS CONFIDENTIAL**19-002****.1 General**

Names, addresses and all other information concerning the circumstances of any individual for whom or about whom information is obtained is confidential and shall be safeguarded. This is true of all information whether written or oral.

No disclosure of any information, obtained by a representative, agent or employee *of CDSS or of the county welfare department*, in the course of discharging his or her duties, shall be made, directly or indirectly other than in the administration of public social service programs, *or as noted below, or as prescribed by statute*. (This includes acknowledgement by a welfare department receptionist or telephone operator that a person is receiving assistance.)

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Disclosure of information which identifies by name or address any applicant or recipient of public social services to federal, state or local legislative bodies and their committees without such applicant or recipient's consent is prohibited. Such bodies include the United States Congress, the California State Senate and Assembly, city councils and county boards of supervisors. Exceptions to this rule are found in Section 19-004.3 of this division regarding audits and MPP Section 25-480, concerning discharge of accounts.

Both the release and possession of confidential information in violation of the rules of this division are misdemeanors.

2. Federal Tax Information

.21 Definition

For the purposes of this section, the term "tax information" means any information supplied by the Internal Revenue Service (IRS), concerning a taxpayer's identity, the nature, source, or amount of his/her earned income, unearned income (including interest or dividends), payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments.

.22 Confidentiality and Disclosure

No employee or former employee of the county who has or had access to tax information in any manner connected with his/her service shall disclose any tax information obtained by him/her except for the purposes provided in Section 20-006.

.23 Safeguards

Counties shall establish the following safeguards in order to protect the confidentiality of, and to prevent the unauthorized disclosure of, tax information received from IRS:

- .231 Establish and maintain a secure area or place in which IRS tax information shall be stored;
- .232 Restrict access to the tax information only to persons whose duties or responsibilities require access to this information;

19-002	INFORMATION THAT IS CONFIDENTIAL (Continued)	19-002
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- .233 Provide other such safeguards or controls as prescribed by IRS guidelines and necessary or appropriate to protect the confidentiality of tax information;
- .234 Report annually in a format prescribed by SDSS the safeguard procedures utilized by the counties for ensuring that the confidentiality of tax information is being maintained; and
- .235 The county shall destroy IRS source material upon the independent verification of IRS tax information or upon completion of appropriate case action, whichever is earlier. Methods of destruction shall be those used for confidential material.

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Penalties for Unauthorized Disclosure of Tax Information

State Tax Information (Franchise Tax Board)

"Except as otherwise provided in this article, it is a misdemeanor for the Franchise Tax Board or any member thereof, or any deputy, agent, clerk, or other officer or employee of the state (including its political subdivisions), or any former officer or employee or other individual, who in the course of his or her employment or duty has or had access to returns, reports, or documents required under this part, to disclose or make known in any manner information as to the amount of income or any particulars set forth or disclosed therein."

Federal Tax Information (Internal Revenue Service)

a) Criminal Penalties

"It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or, return information (as defined in Section 6103(b)) acquired by him or another person under subsection (d), (i)(3)(B)(i), (l)(6), (7), (8), (9), (10), or (11), or (m)(2) or (4) of Section 6103. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution."

HANDBOOK CONTINUES

19-002	INFORMATION THAT IS CONFIDENTIAL (Continued)	19-002
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HANDBOOK CONTINUES

b) Civil Damage

"If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, discloses any return or return information with respect to a taxpayer in violation of any provision of Section 6103, such taxpayer may bring a civil action for damages against such person in a district court of the United States."

HANDBOOK ENDS HERE

NOTE: Authority cited: Section 10850, Welfare and Institutions Code. Reference: Section 10850, Welfare and Institutions Code and Public Law (P.L.) 104-193, Section 837 (Personal Responsibility and Work Opportunity Reconciliation Act of 1996).

19-003	NONCONFIDENTIAL INFORMATION	19-003
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Statistical information and social data, that is not identified with a particular individual may be released.

Examples of information that may be released would include, but are not limited to such information as statements of the number of recipients, total expenditures per program or administration, average grant figures, and other general information concerning the case load as a whole.

19-004	RELEASE OF CONFIDENTIAL INFORMATION	19-004
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.1 General Rule

- .11 Confidential information may be released without the consent of the applicant/recipient, only for purposes directly connected with the administration of public social services except as specified in Section 19-004.4, EAS Manual Section 42-715.3 which addresses the confidentiality rules under the Domestic Abuse regulations, or by statute. Public social services are defined as aid or services administered or supervised by CDSS or the State Department of Health Services.

.2 Contractors

Whenever a contract is entered into with a public or private agency which involves the release of confidential information, the contract shall contain a provision insuring that such information will be used in accordance with the restrictions found in W&IC Section 10850 and this division.

19-004	RELEASE OF CONFIDENTIAL INFORMATION (Continued)	19-004
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.3 Public Officials

- .31 Certain public officials, and their duly appointed agents, and deputies, are entitled to examine confidential information. The right of public officials, including law enforcement personnel, to examine public assistance records does not exist if the request is for a purpose not connected with the administration of the public social service programs. Examples of situations under which information may not be given out include but are not limited to such things as traffic violations, tax fraud investigation, or criminal investigations not related to welfare except pursuant to Section 19-004.4. Both the release and possession of confidential information in violation of these regulations is a misdemeanor. The officials who are entitled to examine confidential information include but are not limited to:

.311 District Attorney or County Counsel

- (a) In the administration of aid, it is necessary to disclose information to these offices when they are conducting investigations, prosecutions, criminal or civil proceedings directly connected to public social services including child support services and the location of families in which the caretaker has abducted or kidnapped the aided child(ren).

.312 California Department of Social Services, State Department of Health Services, and Department of Health, Education, and Welfare (HEW), and county welfare departments within the State of California.

- (a) These agencies, their representatives and employees shall have access to public social services records as needed in the administration of public social services.

.313 County Auditor

- (a) In addition to the authority to examine claims and other financial transactions in the routine line of duty, the auditor may examine records as necessary to satisfy himself/herself that fiscal accountability is being maintained and that progress relating to payment, claiming and repayment of aid are proper and effective.

19-004	RELEASE OF CONFIDENTIAL INFORMATION (Continued)	19-004
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.314 Audits

- (a) Federal, State and County auditors having direct or delegated authority are authorized to examine records as necessary to perform fiscal audits and/or procedure reviews. Legislative bodies and their committees authorized by law to conduct audits or similar activities in connection with the administration of public social services shall be permitted to examine records.
- (b) Such committees include, but are not limited to, the California Joint Legislative Audit Committee, the California Auditor General and their staff, and the United States General Accounting Office.

.315 Legislatures and their Committees

- (a) Refer to Section 19-002 for the prohibition against release of confidential information to legislatures without applicant/recipient consent. Any releases made to legislatures or their committees should be accompanied by the warning that Welfare and Institutions Code Section 10850 makes the use or release of the information for a purpose not directly connected with the administration of public social services a misdemeanor.

.4 Exception to General Rule - Law Enforcement Officials

- .41 Pursuant to the procedures and restrictions in Welfare and Institutions Code Sections 10850.3 and 10850.7, law enforcement officials may be given otherwise confidential information when:

- .411 The applicant/recipient is deceased, Welfare and Institutions Code Section 10850.7.

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- (a) Welfare and Institutions Code Section 10850.7 provides:

Notwithstanding the provisions of Section 10850, an authorized employee of a county welfare department may disclose confidential information concerning a public social services applicant or recipient to any law enforcement agency where the applicant or recipient is deceased. Information that may be released pursuant to this section shall be limited to the name, address, telephone number, birthdate, social security number, and physical description of the applicant for, or recipient of, public social services. A county welfare department may release the information specified by this section to any law enforcement agency only upon a written request from the head of the agency specifying that the applicant or recipient is deceased and that the agency is otherwise unable to adequately identify the deceased. The information specified may alternately be released by telephone, whereupon the head of the law enforcement agency shall submit the request in writing within five days of the release.

This section shall not be construed to authorize the release of a general list identifying individuals applying for or receiving public social services.

The provisions of this section shall be operative only to the extent permitted by federal law. The section shall not apply to, but shall exclude the Medi-Cal program established pursuant to Chapter 7 (commencing with Section 14000) and following.

HANDBOOK ENDS HERE

- .412 A felony arrest warrant has been issued for the applicant/recipient, Welfare and Institutions Code Section 10850.3. See Section 19-004.42 for exceptions to the Food Stamp and CalWORKs programs.)

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Welfare and Institutions Code Section 10850.3(b) provides in part:

A county welfare department may release the information specified by this section to any law enforcement agency only upon a written request from the agency specifying that a warrant of arrest for the commission of a felony has been issued as to the applicant or recipient. This request may be made only by the head of the law enforcement agency, or by an employee of the agency so authorized and identified by name and title by the head of the agency in writing to the county welfare department.

HANDBOOK ENDS HERE

- (a) Information releasable pursuant to a felony arrest warrant shall be further limited to data contained within disbursement records for CalWORKs, Special Circumstances, and social service cases other than Child Welfare Service records. Release shall be limited to name, address, telephone number, birthdate, and social security account number (where such items are present) from the record of disbursement.
 - (1) No data shall be released from the case record.
 - (2) No data shall be released from SSI/SSP records except for Special Circumstances.
 - (3) This section shall not be construed to limit releases pursuant to Penal Code Section 11166.
- (b) Food Stamp and Adoption records, including AAP, are not within the scope of this Division.

.42 Release of Food Stamp and CalWORKs Case Information to Law Enforcement Officials

- .421 In the Food Stamp and CalWORKs programs, the address, social security number, and, if available, photograph (with the exception of photo images obtained from the Statewide Fingerprint Imaging System [MPP Sections 40-105.3 and 63.601.12] of any Food Stamp household member and/or CalWORKs applicant/recipient, shall be made available on request to any Federal, State, or local law enforcement officer if the officer furnishes the county welfare department with the name of the member/applicant/recipient and notifies the county welfare department that:

19-004	RELEASE OF CONFIDENTIAL INFORMATION (Continued)	19-004
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- (a) The member/applicant/recipient is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime that, under the law of the place the member/applicant/recipient is fleeing, is a felony (or in the case of New Jersey, a high misdemeanor); or
- (b) The member/applicant/recipient is violating a condition of probation or parole imposed under Federal or State law; or
- (c) The member/applicant/recipient has information that is necessary for the officer to conduct an official duty related to Sections 19-004.421(a) and .421(b); and
- (d) Locating or apprehending the member/applicant/recipient is an official duty of the law enforcement officer; and
- (e) The request is being made in the proper exercise of an official duty.

.5 Release of Confidential Information in Conjunction With a Lawsuit

If an applicant/recipient or caretaker relative becomes a party or plaintiff in any suit against the State of California, any political subdivision of the state, or any agency administering the laws governing the administration of public social services and such suit challenges the validity of the laws governing the administration of public social services or the manner in which the laws have been applied, the attorney representing the state, political subdivision, or agency shall be given access to all files and records relating to the plaintiff. Such files and records may be disclosed to the court having jurisdiction of the lawsuit insofar as they are relevant to the determination of any factual or legal issue in the case. In such cases, it should be brought to the court's attention, when presented with the requested information, of the state law and policy against further disclosure of the information.

On notice of court action ordering records to be produced, where the action is not connected with the administration of public social services, (see 19-002), the county shall notify the appropriate legal officer (county counsel). Such legal officer shall be requested to take immediate action to safeguard the confidential nature of the records.

.6 Release to Schools

- .61 Confidential case information may be released to county superintendents of school and superintendents of school districts, and their representatives, as necessary for the administration of federally-assisted programs which provide assistance in cash, in-kind, or services directly to individuals on the basis of need. If such confidential information is released, the superintendent shall be informed of the criminal prohibition against the use or disclosure of such information for any purpose other than that for which it was obtained.

19-004	RELEASE OF CONFIDENTIAL INFORMATION (Continued)	19-004
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.62 Information concerning the number of CalWORKs families living within a particular school district requested to support entitlement to funds under the Elementary and Secondary Education Act (ESEA) may be released to authorized representatives of the school district. A signed agreement with the school district stating that the confidential information obtained will only be used for purposes of fund claiming under the ESEA and that the district understands that there is a criminal penalty for release or use by the school district for any other purpose shall be obtained. This prohibition includes the use of the confidential records to identify applicants or recipients to school teachers and administrators.

.7 Disclosure to Parents Who Wish to be Reunited With Their Family

.71 Where a person claims to be an absent parent, her/his identification should be verified.

.72 No acknowledgement to the requesting parent that the child(ren) or other parent are receiving aid may be made.

.73 If the family is aided, the aided caretaker shall be contacted for permission to release information. If permission is granted, the information shall be released.

.74 If the absent parent alleges that the aided parent has kidnapped, abused or neglected the child(ren), the case should be referred to the child protective services for appropriate action. The name and address of the applicant or recipient may be released to law enforcement officials for the purpose of locating abducting parents and the abducted child(ren).

.8 Release to Research Organizations

Information requested by research organizations may be released without authorization of the applicant/recipient. Research organizations requesting information must guarantee in writing that they will meet the conditions and protections of this division and Welfare and Institutions Code Section 10850.

NOTE: Authority cited: Sections 10063(b), 10553, 10554, 10850, and 10850.31, Welfare and Institutions Code. Reference: Sections 10063(a), 10850, 10850.31 and 11495, Welfare and Institutions Code and Public Law (P.L.) 104-193, Sections 408(a)(9) and 837 (Personal Responsibility and Work Opportunity Reconciliation Act of 1996).

19-005	RELEASE TO APPLICANT/RECIPIENT OR AUTHORIZED REPRESENTATIVE	19-005
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.1 Information Supplied By the Applicant/Recipient

Information relating to eligibility that was provided solely by the applicant/recipient contained in applications and other records made or kept by the county welfare department in connection with the administration of the public assistance program shall be open to inspection by the applicant/recipient or his/her authorized representative.

.2 Authorizations

For purposes of this section, an authorized representative is a person or group who has authorization from the applicant/recipient to act for him/her.

.21 Written Authorizations

Except, as otherwise provided, all authorizations are to be written.

Written authorizations shall be dated and shall expire one year from the date on which they are given unless they are expressly limited to a shorter period or revoked. In cases involving pending appeals or state hearings, the time period, unless the authorization is expressly limited or revoked, shall extend to the final disposition of the issue involved in the fair hearing or, where applicable, by the courts.

When the authorized representative and the applicant/recipient, or responsible relative caring for the CalWORKs child are both present, no written authorization is required for that particular occasion.

.22 Telephone Authorizations

Telephone authorizations may be accepted in lieu of a written authorization where the circumstances insure that the applicant or recipient has adequately identified himself or herself to the county. A telephone authorization is temporary and should be followed up by a written authorization.

Acceptable items of identification are to be determined by the county but may include such items as case numbers, driver's license numbers, social security account numbers or the mother's maiden name. The procedure for telephone authorizations will usually involve the applicant or recipient first calling their eligibility worker and notifying the worker of whom will be calling on their behalf. This call will authorize the release of confidential information. Examples of typical circumstances for releasing confidential information by telephone authorization include inquiries from medical offices, welfare rights organizations or legislators calling on behalf of the recipient.

NOTE: Authority cited: Sections 10063(b), 10053 and 10554, Welfare and Institutions Code. Reference: Section 10063(a), Welfare and Institutions Code.

19-005	RELEASE TO APPLICANT/RECIPIENT OR AUTHORIZED REPRESENTATIVE (Continued)	19-005
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.3 Applicant/Recipient Written Requests for Assistance to Legislators

Written inquiries to members of legislative bodies signed by applicants or recipients of public social services concerning the receipt of public social services may serve as authorization for release of information sufficient to answer such an inquiry.

.4 Release of Information in Conjunction With a State Hearing

The applicant/recipient or his/her attorney or authorized representative may inspect the case records including the entire case narrative relating to the applicant or recipient which are held by DSS, DHS, or any agency supervised by DSS with the following exceptions listed below in Section 19-006.

19-006	INFORMATION WHICH MAY NOT BE RELEASED TO THE APPLICANT/RECIPIENT	19-006
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Privileged Communications

Portions of the applicant/recipient's record which would qualify as privileged communications as defined by the Evidence Code. This would include Sections 954 (lawyer-client), and 1041 (identity of informer).

NOTE: The physician-patient privilege in Evidence Code Section 990, et seq., belongs to the patient and may be waived by him/her. The right of the patient to inspect his/her records is confined to record maintained by the CWD and does not extend to the records kept by the physician.

19-007	ELIGIBILITY DETERMINATIONS	19-007
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.1 Collateral Contacts in CalWORKs and APSB

Pursuant to EAS Sections 40-157.22 and 40-181.31 individual consent forms, signed by the applicant or recipient are required for each contact made during the evidence gathering process. An exception to this rule is found in MPP Section 20-007.36 which exempts SIUs from the requirement of permission to contact collateral sources.

NOTE: Authority cited: Sections 10063(b), 10553 and 10554, Welfare and Institutions Code. Reference: Section 10063(a), Welfare and Institutions Code.

19-007	ELIGIBILITY DETERMINATIONS (Continued)	19-007
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.11 Permission

If the applicant or recipient does not wish the county to contact a private or public source in order to determine eligibility, the applicant or recipient shall have the opportunity to obtain the desired information or verification himself or herself.

.12 Acceptability and Discontinuances

If the information or verification is unacceptable to the county and the applicant refuses to grant the county permission to collect the information, the applicant will be given the opportunity to withdraw his or her application or the application shall be denied for noncooperation pursuant to EAS Section 40-105.11. Recipients who refuse to give consent for a collateral contact for which no acceptable evidence or verification has been obtained by the recipient, shall be given the opportunity to withdraw from the program or shall be terminated pursuant to EAS Section 40-105.11.

.13 Nothing in .11 or .12 shall prevent an investigation for fraud by the SIU.

.2 Title XX Services -- Outside Contacts by Agencies Other Than The County Welfare Department

.21 When the provider agency determines eligibility, it shall inform the applicant or recipient that, if it is necessary to contact outside sources (including employers) and the applicant or recipient wishes to keep the service confidential, he/she is entitled to request that such contacts be made by the county, and

19-007	ELIGIBILITY DETERMINATIONS (Continued)	19-007
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- .22 The county, upon notification of the individual's request, shall make the outside contacts and relay the information to the provider.

While a client may not object to such contacts, he or she may object to a contact's learning of the particular kind of service sought. To the maximum extent possible, such inquiries should not reveal the specific nature of the service sought by the client. (45 CFR Section 228.6(f)(1) and (2).)

19-008	RECORD KEEPING	19-008
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The purpose of public assistance and social service records is to evidence eligibility and delivery of public social services. The applicant's or recipient's record should only contain facts relevant to his or her case.